

TEXT OF PROPOSED RULEMAKING

TITLE 8. INDUSTRIAL RELATIONS

DIVISION I. DEPARTMENT OF INDUSTRIAL RELATIONS

CHAPTER 2. CALIFORNIA APPRENTICESHIP COUNCIL

SUBCHAPTER 1. APPRENTICESHIP

ARTICLE 10. REQUIRED APPRENTICES ON PUBLIC WORKS CONTRACT

§201. Filing of Complaints.

(a) Appeals by apprentices from discipline shall be filed in accordance with the procedures under 8 C.C.R. 207.1. Complaints that are not appeals from discipline may be filed by any interested person with the Administrator of Apprenticeship or the Administrator of Apprenticeship upon his/her own initiative may issue a complaint, within the time period specified below, when there is cause to believe that a decision, order or action of an apprenticeship program sponsor has been in violation of its standards or rules or an apprentice agreement and has been unfair or unreasonable; or that there has been a violation of:

- (1) Chapter 4, Division 3 of the Labor Code (excluding Section 1777.5 and 3099 et. seq.), ~~30 days~~;
- (2) California Code of Regulations, Title 8, Chapter 2, Subchapter 1 (excluding Article 10), ~~30 days~~;
- (3) ~~Apprenticeship Standards, 30 days~~;
- (4) ~~Apprenticeship Agreements, 30 days~~;
- (5) ~~(3)~~ Equal Opportunity Standards, ~~180 days~~ and which shall be filed and conducted in accordance with the State of California Plan for Equal Opportunity Apprenticeship (see title 8, California Code of Regulations, Section 215);

~~(6) Rules, Regulations or Policies established by an apprenticeship program sponsor, 30~~
days.

(b) All such complaints shall be filed within thirty days of the alleged violation,
except for violations of Equal Opportunity Standards which shall be filed within 180
days.

(c) Complaints filed with, or **issued** by the Administrator of Apprenticeship shall contain the following:

(1) The full name and address of the party (person, organization, or other party) filing the complaint (hereinafter referred to as the "charging party").

(2) The full name and address of the party (person, organization, or other party) against whom the complaint is made (hereinafter referred to as the "respondent").

(3) A clear and concise statement of the facts constituting the basis for the complaint.

(4) The signature of the person filing the complaint or an authorized officer or agent in the case of an organization, employer, labor union, apprenticeship program sponsor, or other interested party.

(5) A declaration by the person signing the complaint, under penalties of law, that its contents are true and correct to the best of his/her knowledge and belief.

(e) **(d)** Upon receipt or issuance of a complaint the Administrator of Apprenticeship shall cause a copy of such complaint to be served upon the respondent(s).

~~(d)~~ **(e)** Complaints may be withdrawn only with the consent of the Administrator of Apprenticeship.

§202. Investigations, Holding of Hearings and Determinations.

(a) The Administrator of Apprenticeship, or his or her designated representative, ~~upon the timely receipt or issuance of a complaint under Section 201, shall~~ may take such steps as he or she deems necessary under the circumstances to investigate the complaint ~~the matter to determine whether the complaint has merit, and in the course of such investigations, the Administrator of Apprenticeship may take such steps as he/she deems necessary under the circumstances~~ and to bring about an amicable adjustment of the controversy. In the event that there are local adjustment procedures which have been approved by the Chief DAS, the charging party(s) shall be referred to that procedure for a period not to exceed 60 calendar days prior to the filing and/or processing of a complaint under this section or Labor Code Section 3081. The referral for local adjustment shall in no way be construed so as to abrogate the statutory right to file a complaint under Section 3081 of the Labor Code.

(b) (this is c from below) The Administrator of Apprenticeship or may designate his/her duly authorized representative may to conduct an investigation, to hold a hearing in connection with a complaint, and may designate his/her duly authorized representative to decide on the complaint. The Administrator of Apprenticeship may in the alternative, delegate, or authorize a representative only to investigate, or only to hold a hearing, and to report, reserving the authority to decide on the complaint. In that case, the duly authorized representative shall submit to the Administrator of Apprenticeship the entire record together with his/her written recommendations. The Administrator of Apprenticeship shall read review the record and the written recommendations before deciding on the complaint.

The Administrator of Apprenticeship may dismiss any complaint that is not timely filed or that is without merit. In such cases the Administrator of Apprenticeship shall prepare a statement of his/her findings and determinations determination of dismissal and file it with the California Apprenticeship Council, and notify all parties to the complaint in writing in accordance with the Code of Civil Procedure Sections 1013a and 2015.5 of his/her determination to dismiss the complaint and the basis for the determination. The determination of dismissal of the Administrator shall be within sixty (60) calendar days of receipt or issuance of the complaint, provided that the sixty (60) days allowed for a local adjustment procedure shall not affect the time provided for the determination of the Administrator. Any continuance caused by the parties shall toll the running of the sixty (60) day period provided for the determination of the Administrator. If any party to the complaint requests a hearing within 10 days of receipt of the notice of determination of dismissal of the complaint and shows good cause why a hearing is necessary, the Administrator or his/her duly authorized representative shall may conduct a hearing in the same manner as set forth in subdivision (b-c).

(b)(c) If the matter is not dismissed, withdrawn or settled satisfactorily, the Administrator of Apprenticeship shall hold holds a hearing it shall be in accordance with the following procedure:

(1) He/she shall fix the time and place of the hearing which shall take place no more than 90 days after the decision to hold a hearing and notify all interested parties to the complaint not less than 30 days in advance in writing in accordance with the Code of

Civil Procedure Sections 1013a and 2015.5 specifying the time and place of the hearing **and specifying whether the hearing will be for the purpose of hearing argument or taking evidence or both.**

(2) **At the hearing,** ~~the~~The interested parties to the complaint shall be given an opportunity to present evidence and oral or written arguments in support of their positions.

(3) The hearing need not be conducted according to technical rules relating to evidence and witnesses. **The hearing officer may require the parties follow any of the rules of procedure set forth in 8 C.C.R. §232.01 et. seq. for hearing on public works complaints and shall notify the parties of any such rules that will be followed at the time the parties are advised of the time and place of the hearing.**

(4) All witnesses testifying before the Administrator of Apprenticeship shall testify under oath.

(5) ~~A full transcript of the hearing shall be taken by a qualified person.~~ **A recording shall be made of the hearing.**

~~(c) The Administrator of Apprenticeship or his/her duly authorized representative may conduct the investigation, hold the hearing, and decide on the complaint. The Administrator of Apprenticeship may however, delegate, or authorize a representative only to hold a hearing and to report, reserving the authority to decide on the complaint. In that case, the duly authorized representative shall hold a hearing and submit to the Administrator of Apprenticeship the entire record of the hearing together with his/her written recommendations. The Administrator of Apprenticeship shall read the record and the written recommendations before deciding on the complaint.~~

(d) In deciding on the complaint after a hearing, the Administrator of Apprenticeship or his/her duly authorized representative shall prepare a statement of findings of fact, ~~make~~ a **and** decision, file it with the California Apprenticeship Council and notify all parties to the complaint in writing in accordance with the Code of Civil Procedure Sections 1013a and 2015.5 of the decision and of any action taken. The Administrator of Apprenticeship's decision on the complaint or any action taken shall be issued or taken no later than sixty (60) calendar days following the hearing.

§203. Appeals to the California Apprenticeship Council.

(a) The following procedures shall be followed when an appeal is filed with the Council within ten (10) days from the date the parties are given notification of the determination. The parties shall be deemed to have been given notification five (5) days after notice has been sent to their address of record.

(1) The Chair of the Council shall appoint three (3) members of the Council to act as an appeal board and decide the appeal. This appeal board shall consist of one member of the Council representing an employee organization and one member representing an employer organization; the third member will be a member who does not represent either of the aforementioned groups and shall act as chair of the appeal board.

(2) The appeal board shall review the entire record and may hold an appeal hearing thereon **to hear argument from the parties.**

(3) In the event of a hearing, the designated chair of the appeal board shall fix the time and place of the hearing on the appeal and notify all interested parties to the appeal not less than two weeks in advance in writing in accordance with the Code of Civil Procedure Sections 1013a and 2015.5 specifying the time and place of the hearing.

(4) The hearing on the appeal shall be limited to a review of the record before the Administrator of Apprenticeship **to determine whether there is substantial evidence in the record to support the decision,** and to oral or written arguments by interested parties to the appeal;

~~except~~ where the appeal board finds that there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before the Administrator of Apprenticeship, **and such evidence might**

require a different decision. ~~In such cases,~~ the appeal board may ~~admit~~ return the matter to the Administrator to admit such evidence to supplement the record and exercise its ~~its~~ his/her independent judgment upon all of the evidence in the record. The appeal board may, in its independent judgment, refer the matter to the program sponsor for reconsideration of its prior action, in an attempt to resolve the matter amicably. In the event the program changes its decision, an appellant apprentice, however, shall be entitled to file a new complaint in accordance with Title 8, Chapter 2, Section 201 or 207.1 of the California Administrative Code.

(5) The appeal board shall submit a written report to the Council summarizing the evidence, findings of fact, and recommended decision. The Council shall take appropriate action on the recommended decision. If for any reason the Council rejects the appeal board's recommended decision, a complete copy of the record shall ~~be furnished~~ have been made available to ~~each member of~~ the Council for independent review and consideration before any action is taken by the Council in rendering a decision.

(6) The Council will timely notify all parties to the appeal of its decision in writing in accordance with the Code of Civil Procedure Sections 1013a and 2015.5.

§207. Termination of Apprentice Agreements.

(a) During the probationary period, if any, an apprentice agreement shall be terminated by the program sponsor at the request in writing of either party. **An apprentice terminated by the program sponsor while on probation shall have no right to file a complaint under section 201 nor to contest the cancellation under section 207.1.**

(b) After the probationary period, or where there is no probationary period, the apprentice agreement may only be terminated by the Administrator.

(1)Where there is mutual agreement of the parties, an apprentice agreement may be terminated by submitting to the Administrator a request in writing to terminate the agreement signed by the parties.

(2)Where there is not mutual agreement, either party may request that the agreement be terminated by the Administrator. The party making the request shall submit whatever evidence it believes shows that there is good and sufficient reason to terminate the agreement. The Administrator shall review the evidence and, where there is good and sufficient reason, shall terminate the agreement. **The Administrator shall act within sixty days of receipt of the request.** No program sponsor shall submit a request to terminate an apprentice agreement unless it shall first have given the apprentice notice in writing of its intended action and, if the program's standards provide for a local adjustment procedure, of the apprentice's right to exhaust the local adjustment procedure. In its request, the program sponsor shall advise the Administrator of the notice to the apprentice. ~~An apprentice who contests a program sponsor's request for termination may also file a complaint under Section 201. If a complaint is filed, the~~

~~Administrator shall join the request for termination with the apprentice complaint,
and act upon both jointly.~~

§207.1. Appeals from Requests to Terminate Apprentice Agreements and from
Apprentice Discipline

(A) An apprentice who contests a program sponsor's request for termination may
file an appeal with the Administrator.

1) Any appeal must be filed within 30 days from written notice of the action of the
Committee, and shall contain:

(i) The full name and address of the apprentice filing the complaint (hereinafter
referred to as the "complainant").

(ii) The full name and address of the party (person, organization, or other party)
against whom the complaint is made (hereinafter referred to as the "respondent").

(iii) A clear and concise statement of the facts constituting the basis for the
complaint and the specific section of the Standards, or Program Rules that the
apprentice contends have been violated.

(iv) The signature of the person filing the complaint.

(v) A declaration by the person signing the complaint, under penalty of perjury, that
its contents are true and correct to the best of his/her knowledge and belief.

(2) Upon receipt of an appeal the Administrator of Apprenticeship shall cause a
copy of such complaint to be served upon the respondent(s).

(3) Respondent shall have 30 days to provide the Administrator with evidence that it
had good and sufficient reason for terminating the agreement and that it followed
its standards and rules in disciplining the apprentice, including minutes of the
appeal hearing which considered the action by the program

(4) After reviewing the complaint and the evidence provided the administrator shall have discretion to investigate the complaint further and may hold a hearing to allow the parties to present argument, either orally or in writing. The Administrator may also allow the parties to present evidence and in such case any hearing shall be in accordance with the procedures set out in 201(b) and (c)

(2) An apprentice who contests a program sponsor's imposition of discipline short of termination may file an appeal with the Administrator following the same procedure set forth in (A) above and the appeal shall be considered in the same manner as set forth in (A) above for appeals from requests for termination.